In the High Court of Punjab and Haryana at Chandigarh

CWP No.18889 of 2006

Date of Decision: 30.11.2006

Satish Kumar

…Petitioner

Versus

State of Haryana and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr. N.C. Kinra, Advocate,

for the petitioner.

JUDGMENT

M.M. KUMAR, J.

The petitioner has been working on the post of Sub Inspector and has challenged show cause notice dated 18.8.2006 (P-2) and order dated 30.10.2006 (P-7) whereby the Director General of Police, Haryana, respondent No. 2 has reviewed the earlier order passed by his predecessor dated 21.12.2004 (P-1). Quashing of Memo. No. 8/114/2005-6HG-II, dated 13.7.2006 has also been sought whereby decision to review the order was stated to be taken by respondent No. 1. A further prayer has been made to direct the

respondents not to give effect to the impugned order dated 30.10.2006 (P-7).

Brief facts of the case are that the petitioner was enrolled as an Assistant Sub Inspector in the Haryana Police force on 12.4.1982. He was confirmed as such w.e.f. 12.4.1985 and promoted as Sub Inspector on 2.11.2001. While the petitioner was posted at Police Lines, Sonipat, he proceeded on 15 days earned leave on 29.8.1991 and he was supposed to resume his duty on 15.9.1991. But he did not turn up. For this misconduct, a regular departmental inquiry was conducted against him in which he was found guilty of the charges levelled against him. The punishing authority i.e. Superintendent of Police, Sonepat, vide order dated 3.3.1992, inflicted the punishment of dismissal from service upon the petitioner. He preferred statutory appeal against his dismissal, which was partly accepted by the Appellate Authority on 21.5.1996 and the punishment of dismissal was reduced to that of stoppage of three increments with permanent effect. The petitioner further preferred a revision petition, which was considered and rejected by the Director General of Police, Haryana, vide order dated 6.12.1996. Thereafter, the petitioner preferred a mercy petition stating therein some new facts, inter alia, material irregularities in the holding of ex parte enquiry and cause of his absence due to the death of his father. The Director General of Police, Haryana, vide order dated 21.12.2004, partly accepted the above mentioned mercy petition and punishment of stoppage of three increments with permanent effect was reduced to that of stoppage of one increment with permanent effect (P-1).

Subsequently, a show cause notice dated 18.8.2006 was served upon the petitioner by the Director General of Police, Haryana, mentioning therein that there is no provision under the rules for entertaining another mercy petition by the DGP once the revision petition is considered and rejected by the earlier DGP, who was equal in status and authority. It has also been mentioned that the State Government vide its Memo. No. 8/114/2005-6HG-1, dated 13.7.206, has accorded approval to withdraw the undue benefits given to the petitioner by Shri M.S. Malik, IPS, the then DGP. It was, thus, proposed that the order dated 21.5.1996 passed by the Appellate Authority reducing the punishment of dismissal from service to that of stoppage of three increments with permanent effect be upheld (P-2). The petitioner vide his representation dated 8.9.2006, made a request for supply of some documents for submission of reply to the show cause notice (P-3). Thereafter, he filed an interim reply dated 23.9.2006 (P-4). Vide TPM dated 19.10.2006, the petitioner was asked to intimate which documents he required for filing complete reply (P-5). On 23.10.2006, the petitioner again made a representation and requested for supply of documents (P-6).

On 30.10.2006, the Director General of Police, Haryana set aside the order dated 21.12.2004 and restored the order of the Appellate Authority, dated 21.5.1996, vide which the punishment of stoppage of three increments with permanent effect was imposed (P-7).

After hearing the learned counsel for the petitioner, we are of the considered view that this petition lacks merit and is liable

to be dismissed. It is well settled that the quasi judicial authorities like the Director General of Police are the creatures of the statute and they can exercise power only in accordance with such a statute. In the present case, the Punjab Police Rules, 1934 (as applicable to Haryana) are applicable. Rule 16.28 of the Rules clothe the Director General of Police with power of overall supervision which seemingly appears to be power of review but it actually does not confer any such powers on him. The Rule reads as under:

> "16.28. Powers to review proceedings.- (1) The Inspector General, a Deputy Inspector General, and a Superintendent of Police may call for the records of awards made by their subordinates and confirm, enhance, modify or annul the same or make further investigation or direct such to be made before passing orders. (The State Government may also call for the records and review the awards made by the Inspector General of Police Punjab or by any other authority subordinate to him.)
>
> (2) If an award of dismissal is annulled, the officer annulling it shall state whether it is to be regarded as suspension followed by reinstatement, or not. The order should also state whether service previous to dismissal should count for pension or not.
>
> (3) In all cases in which officers propose to enhance an award they shall, before passing final orders, give the defaulter concerned an opportunity of showing

> cause, either personally or in writing, why his punishment should not be enhanced."

A perusal of the afore-mentioned rule makes it clear that the Director General of Police and other officers have been clothed with the power to call for the records of any case for going through the orders passed by their subordinates. They have also been empowered to confirm, enhance, modify or annul any such order or issue directions for further investigation. Similar power has been given to the State Government. In the present case, the Director General of Police on receipt of 'mercy petition' from the petitioner had passed the order dated 21.12.2004 (P-1) by setting aside the order dated 21.5.1996 passed by the Appellate Authority. The afore-mentioned provision could not be construed to mean that the Director General of Police is entitled to review its own order. The expression 'review' used in Rule 16.28 only connotes the supervisory power of the superior officers over inferior and subordinate officers. In any case the principle of reasonableness would require that an order passed as far as back as more than 8 years is not re-opened because it would violate all limits of reasonableness.

Even otherwise it is patent from the record that the Superintendent of Police after holding enquiry into the charges had inflicted on the petitioner the punishment of dismissal from service vide order dated 3.3.1992. The afore-mentioned order was modified in appeal on 21.5.1996 and punishment of stoppage of three increments with permanent effect was imposed. Even the revision petition filed by the petitioner was dismissed by the Director General

of Police, vide order dated 6.12.1996. It was almost after more than 8 years that the Director General of Police entertained the 'mercy petition' and set aside the appellate order dated 21.5.1996, vide order dated 21.12.2004 (P-1) by assuming the jurisdiction of 'review' which does not flow from Rule 16.28 of the rules.

The argument raised by Mr. N.C. Kinra, learned counsel for the petitioner is that the impugned order dated 30.10.2006 (P-7) has been passed without furnishing the petitioner various copies of documents as demanded by the petitioner vide application dated 8.9.2006 (P-3) and 23.10.2006 (P-6). We are not impressed with the argument raised because if such an argument is accepted then the resultant effect would be that the order dated 21.12.2004 (P-1) which is sought to be annulled by the impugned order dated 30.10.2006 (P-7) would stand revived. It is well settled that if by exercise of jurisdiction under Article 226 of the Constitution an order is quashed on the ground of breach of natural justice then the Court is not bound to exercise such jurisdiction if it would result into restoration of an earlier order of the Government which had also been passed in breach of the principles of natural justice or which was otherwise illegal. The aforementioned proposition has came up for consideration before Hon'ble the Supreme Court in the case of **Gadde Venkateswara Rao v. Government of Andhra Pradesh, AIR 1966 SC 828**, which is a clear authority for the proposition that it is not always necessary for the Court to strike down an order merely because it has been passed against the petitioner in breach of natural justice. A pointed question

was framed and considered by Hon'ble the Supreme Court in the case of **M.C. Mehta v. Union of India, (1999) 6 SCC 237,** which is as under:

> "(2) Whether this Court is not bound under Article 32 (or the High Courts under Article 226) to quash an order of the Government on the ground of breach of natural justice if such an action will result in the restoration of an earlier order of the Government which was also passed in breach of natural justice or which was otherwise illegal?"

After referring to its earlier judgment in the case of Gadde Venkateswara Rao (supra), their Lordships observed as under:

> "The above case is a clear authority for the proposition that it is not always necessary for the Court to strike down an order merely because the order has been passed against the petitioner in breach of natural justice. The Court can under Article 32 or Article 226 refuse to exercise its discretion of striking down the order if such striking down will result in restoration of another order passed earlier in favour of the petitioner and against the opposite party, in violation of the principles of natural justice or is otherwise not in accordance with law.

Apart from dealing with the breach of principles of natural justice, their Lordships also considered the question whether the interference of the Court under Article 226 of the Constitution would result into restoration of another order which was not legal. The Supreme Court in M.C. Mehta's case (supra) has made a

reference to the case of **Mohd. Swalpleh v. IIIrd ADJ, (1998) 1 SCC 40**. The views of their Lordship is discernible from para 18 of the judgment in M.C. Mehta's case (supra) and the same reads as under:

> "We would next refer to another case, where though there was no breach of the principles of natural justice, this Court held that interference was not necessary, if the result of interference would be the restoration of another order which was not legal. In Mohd. Swalleh v. IIIrd ADJ (1988) 1 SCC 40 which arose under the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act,1972, the prescribed authority dismissed an application filed by the landlord and this was held clearly to be contrary to the very purpose of Section 43(2)(rr) of the Act. The District Court entertained an appeal by the landlord and allowed the landlord's appeal without noticing that such an appeal was not maintainable. The tenant filed a writ petition in the High Court contending that the appeal of the landlord before the District Court was not maintainable. This was a correct plea. But the High Court refused to interfere. On further appeal by the tenant, this Court accepted that though no appeal lay to the District Court, the refusal of the High Court to set aside the order of the district Judge was correct as that would have restored the order of the prescribed authority,

which was illegal."

When the principles enunciated in the afore-mentioned judgments of Hon'ble the Supreme Court are applied to the facts of the present case then it becomes evident that if this Court exercise jurisdiction under Article 226 of the Constitution, quash the order dated 30.10.2006 (P-7) it would lead to unnecessary consequence of restoration of the order dated 21.12.2004 (P-1). The afore-mentioned order could not be sustained in the eyes of law as it is wholly unreasonable because the same is without jurisdiction and it has been passed after the expiry of more than four years. Therefore, we are not impressed with the argument raised by Mr. N.C. Kinra, learned counsel for the petitioner.

For the reasons mentioned above, this petition fails and the same is dismissed.

(M.M. KUMAR)
JUDGE

(M.M.S. BEDI)
JUDGE

30.11.2006
Pkapoor